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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALISE MALIKYAR and ROBERT JACOBSEN,)	Case No: CV-07-03533- WHA
Plaintiffs,)	PLAINTIFFS TRIAL BRIEF REGARDING
)	RATIFICATION OF ACTS OF AGENT BY
)	PRINCIPAL
vs.)	
JOHN SRAMEK, BERNADETTE SRAMEK,)	
HAROLD M. JAFFE, JOHN S. SRAMEK)	
AND BERNADETTE SRAMEK)	
REVOCABLE LIVING TRUST AND DOES)	
1 TO 100 INCLUSIVE)	
Defendants.)	

In this trial there will be evidence that if John Sramek did not place the wiretapping devise on the plaintiffs residence, he ratified the action of Harold Jaffe. Plaintiff contends the evidence at trial shows this ratification through a failure to repudiate the wrongful conduct. As respects a principals ratification of his agents acts, quiescence of principal is tantamount to acquiescence. Gain v. Austin (1943) 58 Cal App. 2d 250.

Actual affirmative ascent is not necessary for a principal to ratify the acts of its agent. An agent's originally unauthorized act may be ratified by implication where the only reasonable

1 interpretation of the principal's conduct is consistent with approval or adoption. (Rakestraw v.
 2 Rodrigues (1972) 8 Cal.3d 67, 73. For example, an employer's failure to discharge an employee
 3 after learning of the employee's misconduct may be evidence of ratification. (Murillo v. Rite
 4 Stuff Foods, Inc. (1998) 65 Cal.App.4th 833, 852 Such ratification has the effect of relating the
 5 agent's authority back to the time when the act was performed. (Rakestraw v. Rodrigues, supra, 8
 6 Cal.3d at p. 73.) Consequently, liability may be imposed on the principal/employer if it is found
 7 to have ratified the otherwise unauthorized misconduct of the agent/employee. (Coats v.
 8 Construction & Gen. Laborers Local No. 185 (1971) 15 Cal.App.3d 908, 914)

11 In Coats v Construction & General Laborers Local No 185 (1971) 15 Cal App. 3d 908.
 12 Plaintiff a member of defendant local, sued for tort damages for an assistant committed by two
 13 assistant business representatives of defendant principal. After the assault plaintiff reported the
 14 incident to defendant's officers. Defendant continued to employ the assailants. The trial court
 15 entered judgment against the defendant principal for compensation and punitive damages.
 16 Defendant appealed. The court of appeals affirmed, holding that substantial evidence supported
 17 the finding that defendant principals ratified the acts of the assistants who assaulted plaintiff.
 18 The court relied on evidence that defendant principal did not repudiate the actions of the
 19 assistants when it was informed of them.

22 McChristian v. Pipkin (1946) 75 Cal. App. 2d 249 was an action for assault and battery
 23 brought against the owners of a theatre arising from a beating inflicted by a special officer
 24 employed by the theatre. After the incident the plaintiff spoke to the manager of the theater and
 25 related his version of the facts. Defendant kept the officer in his employ. The jury awarded
 26 punitive damages against all defendants and defendants appealed. The court of appeal affirmed
 27 holding defendants retention of the officer was sufficient evidence to support finding that
 28

1 defendant ratified the officer's actions. The court noted failure to discharge an agent guilty of
2 oppressive acts is evidence in itself to support ratification.

3 An agents authority may be proved by circumstantial evidence. MacDonnell v. California
4 Lands Inc. (1940)15 Cal 2d 344, and it may be implied by circumstances (1911) Robinson v
5 American Fish Co. 17 Cal App. 212
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7 Accordingly, plaintiff should be permitted to attempt to develop evidence that establishes
8 the ratification of the acts of Jaffe by Sramek.
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11 Respectfully submitted,

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13 Dated: June 17, 2009

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14 BY:

15 /s William Jemmott
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